

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )

Amendment to the Commission's )  
Rules to Permit Flexible Service )  
Offerings in the Commercial Mobile )  
Radio Services )

WT Docket No. 96-6

**DOCKET FILE COPY ORIGINAL**

To: The Commission

**COMMENTS OF CELPAGE, INC.**

Celpage, Inc., by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby submits its Comments in response to the Notice of Proposed Rule Making<sup>1</sup> ("NPRM") in the above-captioned proceeding.

**I. Statement of Interest**

Celpage is the parent company of Pan Am License Holdings, Inc., a licensee of Private Carrier Paging ("PCP") and Radio Common Carrier ("RCC") facilities throughout the Commonwealth of Puerto Rico and the United States Virgin Islands.<sup>2</sup> Celpage has grown to become the largest paging company in Puerto Rico. Celpage has also been an active member of the Association for Private Carrier Paging ("APCP") virtually since its inception, and has previously been an interested party in FCC rule making proceedings pertaining to PCP and RCC paging issues, and the implementation of the commercial mobile radio service ("CMRS") rules.

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<sup>1</sup> FCC 96-17 (released January 26, 1996). By Order released on February 23, 1996, the comment deadline in this proceeding was extended to March 1, 1996.

<sup>2</sup> With the implementation of Sections 3(n) and 332 of the Communications Act in the CMRS Second Report and Order, 9 FCC Rcd 1411 (1994), PCP and RCC paging services were reclassified as commercial mobile radio service (CMRS).

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As a provider of one-way signaling services, Celpage will be adversely affected if the Commission's proposals gives broadband CMRS licensees additional flexibility in their service offerings, while denying that same flexibility to narrowband CMRS licensees. Moreover, due to its practical experience, Celpage is well-qualified to comment on the proposals contained in the NPRM. Celpage therefore has standing as a party in interest in this proceeding.

## **II. Summary of the NPRM.**

The NPRM proposed to permit broadband CMRS licensees to provide wireless fixed local loop services, and sought comment on whether broadband licensees should be able to provide other fixed radio services. See NPRM at ¶ 1. Specifically, the Commission proposed to amend its broadband PCS rules to permit licensees in that service to provide wireless local loop services, along with mobile services, as principal uses of the broadband PCS spectrum. Id. at ¶ 13. The Commission also proposed to extend the same flexibility to cellular and SMRS licensees. Id. at ¶ 16. The NPRM sought comment on technical and operational rules to be applied to wireless local loop and fixed operations in those services, and on the impact of the proposed rule changes on the availability of broadband spectrum for mobile services. Id. at ¶¶ 14-15, 17. The Commission proposed to treat such fixed service offerings by CMRS carriers as an integral part of the carrier's CMRS offerings, and to regulate them as such. Id. at ¶ 20. The Commission also questioned whether the public interest would be served by permitting narrowband CMRS providers to provide similar flexibility to offer wireless local loop services. Id. at ¶ 18.

**III. All CMRS Providers Should Be Permitted  
the Flexibility to Provide Wireless  
Local Loop and Other Fixed Services.**

As a general matter, Celpage applauds the Commission's proposals to allow CMRS providers the flexibility to provide wireless local loop services, wireless Internet access, and a host of other fixed services, in conjunction with their mobile services offerings. Celpage urges the Commission to allow narrowband CMRS licensees the same flexibility as their broadband counterparts.

The Commission has previously recognized that one of the Congressional goals in creating the CMRS classification in the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act") was the "goal of promoting economic forces -- not regulation -- to shape the development of the CMRS market." See Third Report and Order in GN Docket No. 93-252, PR Docket No. 93-144, and PR Docket No. 89-553, FCC 94-212, at ¶ 29 (released September 23, 1994) ("Third CMRS Order"). In its CMRS rule making proceedings, the Commission determined that all CMRS services were "substantially similar." Id. at ¶ 26. The Commission based that determination on its findings that all CMRS services actually or potentially compete with one another. Id. Indeed, the Commission specifically found that one-way paging services are competitive with broadband services such as cellular. Id. at ¶¶ 60-62. The Commission explicitly rejected a definition of "substantially similar" services based upon technical differences, noting that those distinctions frequently arose from disparate regulatory treatment of the various CMRS services, and that it was the intent of both Congress and the Commission to eliminate such regulatory disparities to the extent practical. Id. at ¶ 28.

Mindful of its statutory mandate to implement changes to its technical and operational

rules "as may be necessary and practical" to ensure that similar services receive similar regulatory treatment, the Commission has endeavored to adopt rules "intended to be sufficiently flexible to enable licensees to respond to changing customer needs and demands." See, e.g., id. at ¶ 79. Celpage submits that the Commission's policy goals, which it has been implementing in the CMRS rule making proceedings, would be served by allowing all CMRS operators, both broadband and narrowband, sufficient flexibility to provide such services as the marketplace may demand.

As an initial matter, Celpage believes that permissible fixed services by CMRS providers should extend beyond the provision of "wireless local loop" services; any fixed service offerings that a carrier can provide over its allocated channels, without harmful interference to other licensees, should be permitted. Although the NPRM appeared to address only wireless fixed services, Celpage further submits that CMRS carriers should also be permitted to provide service offerings through wireline facilities integrated with their allocated channels.

While Celpage understands the Commission's concerns that the provision of fixed services might detract from CMRS carriers' mobile service offerings; see NPRM at ¶ 24, Celpage does not believe that those concerns are justified. As the Commission has noted, consumer demand for mobile services is increasing, and that increase is expected to continue. Id. The Commission has also recognized that the CMRS marketplace is highly competitive. See, e.g., Third CMRS Order at ¶ 53. In such a highly competitive, rapidly changing industry, it is not realistic to fear that carriers will ignore customer demands. If consumers prefer mobile service offerings to the ancillary fixed service offerings of CMRS carriers, carriers will provide those services that consumers want; any carrier who fails to do so will lose subscribers to its

competitors. Additionally, by permitting CMRS carriers to integrate fixed wireline, as well as wireless, services with their CMRS offerings, carriers will have increased flexibility to provide an array of services by the most efficient means of transmission.

Rather than viewing CMRS fixed service offerings as distinct from CMRS mobile offerings, Celpage sees the two types of services as complementary. Consumers and businesses have a wide variety of telecommunications needs; the ability to have all of those needs, whether for "fixed" or "mobile" communications services, met by a single carrier will result in greater conveniences and cost savings to the public. Public demand for "fixed" services can be met as readily by radio carriers as by wireline carriers; but, only spectrum-based carriers have the potential to meet public need for both fixed and mobile services. Celpage urges the Commission to eliminate the regulatory barriers that artificially prevent CMRS licensees from providing a full array of services.

Celpage further submits that all CMRS licensees, regardless of the specific service for which they are licensed, be permitted to offer fixed services in competition with each other and with wireline carriers. Although the channel allocations to narrowband CMRS services are much smaller than those granted to their broadband competitors, narrowband licensees have similar possibilities and potential for providing competitive services to wireline service providers.

For example, with the use of the type of switch currently used by local exchange carriers ("LECs") and specialized computer software, calls from the public switched network to a paging subscriber can be received by the paging carrier's switch, identified by computer and automatically routed to the carrier's message center. The computer can then send the message to

the paging terminal, and subsequently to the paging transmitters. There are a myriad of additional services that can be provided to integrate wireline and messaging services through the use of that switch; it may be possible for a paging carrier to provide competitive telephone services through the integration of these technologies. The Commission's stated goals of regulatory symmetry and promoting competition will be best served by permitting CMRS licensees to develop these technologies and services based upon their own efforts and innovations.

#### **IV. Expanded Service Offerings Should be Regulated as CMRS.**

The Commission has proposed to treat fixed wireless local loop services and other fixed service offerings by CMRS carriers as CMRS services for regulatory purposes. See NPRM at ¶ 20. Celpage supports the Commission's tentative conclusion to regulate all offerings by CMRS carriers under the CMRS regime.

As the Commission noted, CMRS carriers will likely use the same facilities to provide both fixed and mobile service offerings, and the development of such integrated networks may be impeded by "multiple layers of regulation." See id. Celpage agrees that subjecting the component portions of integrated service offerings to different regulatory standards will place an unnecessary burden on both carriers and the Commission. Moreover, subjecting the "fixed" portion of a CMRS carrier's integrated service offerings to state entry and rate regulation will impede CMRS carriers' abilities to rapidly develop these integrated services and bring them to the marketplace.

Since the fixed service options contemplated in the NPRM, and those additional fixed service options suggested by Celpage, will be used in conjunction with the carrier's mobile

service offerings over the carrier's licensed CMRS spectrum, those fixed services will largely still be "ancillary" to the provision of mobile services. As an integral part of carriers' CMRS offerings, these fixed services should be regulated as CMRS. Celpage urges the Commission to define all telecommunications services provided by CMRS, if part of an integrated network over or in conjunction with their licensed CMRS spectrum, as "CMRS."

**V. The FCC Should Explicitly State that Fixed Service CMRS Are Preempted and Entitled to Co-Carrier Status.**

Celpage wishes to ensure that, in adopting regulations for fixed CMRS service offerings, the Commission is explicit in its classification of those services as "CMRS," and requests that the Commission's Rules explicitly state that, as such, state rate and entry regulations of these services are preempted. As stated in the preceding section, the proposed fixed services will likely be offered as an integrated part of carriers' CMRS offerings. Any ambiguity concerning the states' authority over these offerings may "open the door" to state rate and entry regulation of services which are inherently "CMRS" services, contrary to the Budget Act amendments to the Communications Act. See 47 U.S.C. § 332(c)(3). In order to ensure that new service options are expeditiously made available to the public, and that state regulations do not impose unnecessary costs on carriers, the state public utilities commissions should be expressly preempted from imposing rate and entry regulations on CMRS fixed services, unless a particular state can make the showing required by Section 332(c)(3)(A) of the Act. See 47 U.S.C. § 332(c)(3)(A).

Additionally, to the extent that a CMRS carrier wishes to integrate wireline service offerings with its wireless mobile and fixed service offerings, Celpage respectfully requests that the Commission carefully monitor the development of those services to ensure that the states do

not place unnecessary burdens on CMRS carriers. Section 253 of the recently-enacted Telecommunications Act of 1996 (the "Telecommunications Act")<sup>3</sup> declares that no state or local statute or regulation may prohibit any entity from providing any telecommunications services, and that those categories of regulation that the states are permitted to impose must be imposed in a competitively neutral and non-discriminatory fashion. The Telecommunications Act expressly authorizes the Commission to preempt any state or local law that acts as an entry barrier in violation of Sections 253(a) and (b). Furthermore, the Telecommunications Act expressly provides that the CMRS state preemption provisions of Section 332(c)(3) of the Act are not affected by the new statute. To the extent the Commission finds a particular fixed service offering is not CMRS, and thus not exempt from state regulation under Section 332(c), Celpage urges the Commission to use the preemption authority Congress has granted it in Section 253(d) of the Telecommunications Act, to ensure that state entry and rate regulations do not prevent mobile service carriers from making new and varied integrated CMRS services available to the public.

Celpage also urges the Commission to explicitly hold that other carriers, including the LECs and competing CMRS carriers, are required to provide interconnection upon reasonable request to CMRS carriers providing fixed service offerings, pursuant to Section 201(a) of the Act. In the past, paging companies seeking to offer new services have had considerable difficulty in obtaining interconnection on reasonable and non-discriminatory terms. Particularly in this context, where CMRS providers may be proposing wireless local loop service or other services that potentially compete directly with the LECs, the LECs may feel some competitive

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<sup>3</sup> Pub.L.No. 104-104, 110 Stat. 56 (1996).




reason to do otherwise than honor their interconnection obligations. Similarly, CMRS carriers in competition with one another may be less than willing to provide interconnection to their competitors. The FCC should ensure that all carriers honor their statutory obligations to provide prompt and reasonable interconnection for these fixed services.

**Conclusion**

For all the foregoing reasons, Celpage respectfully requests that the Commission adopt its proposal to allow CMRS licensees to provide a variety of fixed services, and that narrowband CMRS licensees be permitted the same flexibility as broadband CMRS licensees to provide such services.

Respectfully submitted,

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March 1, 1996

## **CERTIFICATE OF SERVICE**

I, Regina Wingfield, a legal secretary in the law firm of Joyce & Jacobs, Attys. at Law, LLP, do hereby certify that on this 1st day of March, 1996, copies of the foregoing Comments of Celpage, Inc. were delivered by hand to the following:

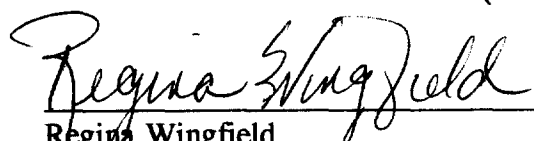
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